[redacted]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

COMMENTS OF CAPITAL CITIES/ABC, INC.

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SUMMARY

The benchmarks for attribution should be set no more restrictively than is necessary to identify those interests likely in the substantial majority of cases to impart control over a licensee's core areas of decision-making over programming, personnel and competitive practices. The consequences of overly broad attribution guidelines would be real and harmful; they would interfere with competition and undermine the availability of capital. Our comments stress the importance of clear-cut rules which will in most situations avoid case-by-case determinations. Subject to our proposal for dealing with combined non-attributable interests, our position with respect to the individual benchmarks is as follows:

Voting Stock

The Commission should carefully consider whether or not the evidence warrants raising the benchmarks for both non-passive and passive shareholders to reflect current corporate ownership patterns.

Passive Voting Shareholders

In addition, we suggest that it may be appropriate to broaden the application of the passive-investor benchmark to include other investment entities not now covered so long as they meet the passivity standard currently applied to the approved types of passive investor.

Single Majority Shareholder Exception and Non-Voting Stock

We believe that the exceptions to attribution where there is a single majority shareholder and for non-voting stock should be retained because such minority shareholders and non-voting shareholders are unable to direct the affairs or the activities of the licensee.

Partnership Interests

We propose that the Commission revise its insulation criteria for limited partners to provide that such interests are non-attributable if the limited partner certifies in writing that he does not, and will not attempt to exercise authority or influence over the core operations of the licensee.

Limited Liability Companies

We propose that limited liability companies be treated for attribution purposes the same as limited partnerships.

Debt and Contractual Interests

Debt -- and by analogy, other arms'-length, non-ownership, contractual relationships with licensees that carry no explicit rights to influence "core" station operations -- should not be attributable. "Balance-sheet" controls over a licensee that a debtholder may require do not extend to "core" operations.

Cross-Interest Policy

The policy should be eliminated because the concerns about blunting competitive incentives which are the historical underpinning of the policy can be safeguarded through antitrust enforcement.

We also recognize the need for a mechanism to identify those relatively rare circumstances where interests, although not ordinarily attributable, could, when accompanied by a high percentage stake in the capitalization or equity of the enterprise, raise sufficient concern about control that an ad hoc approach may be warranted. Our proposal for dealing with this potential for abuse is to establish a second level of case-by-case review that would be limited to circumstances in which the party claiming non-attribution has more than a 50% stake in the capitalization or equity of the enterprise. Under those circumstances, we believe it would be reasonable for the Commission to apply a presumption of attribution which could be rebutted by a showing that the 50% plus stakeholder does not in fact have the right to exercise and has not exercised control over the licensee's core areas of decision-making.

We believe that any new attribution rules adopted by the Commission should be prospective. An interest acquired by a party that was not attributable at the time of acquisition should not be made attributable by the adoption of new rules. Parties who formed relationships or made investments under rules then in force should not have their expectations disrupted and their prospective financial advantage forfeited as the result of unanticipated changes in the attribution rules.

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To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Comments in response to the Notice of Proposed Rule Making in the above-entitled proceeding ("Notice").[1]

I. Introduction

A. Background

By its Notice, the Commission requested comment on a broad review of the broadcast media attribution rules. Those rules define what ownership and positional relationships constitute

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[1] MM Docket Nos. 94-150, 92-51, 87-154, Notice of Proposed Rule Making, FCC 94-324 (released January 12, 1995).

"cognizable interests" for the purpose of applying the Commission's various multiple ownership rules.

Capital Cities/ABC's interest in this proceeding stems from its ownership and operation of eight television stations,[2] twenty-one radio stations (eleven AM stations and ten FM stations), the ABC Television Network, and a number of cable networks and daily newspapers. In addition, Capital Cities/ABC has an interest in how the attribution rules apply to members of the boards of, and investors in, the company and its subsidiaries. The attribution rules have the potential to diminish companies' ability to enlist the services of the best possible directors and obtain capital investment on the best available terms. Accordingly, in Capital Cities/ABC's view, to avoid impediments to business operations, the attribution rules must be narrowly tailored to achieve the underlying objectives of the multiple ownership rules.

B. The Basic Principles Underlying the Attribution Rules

The Commission's multiple ownership rules are "designed to prevent any party from influencing the broadcasting practices of more than a predetermined number of outlets in various geographic configurations."[3] The use of the word "influencing" may be

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[2] Subsidiaries of Capital Cities/ABC currently have applications pending before the Commission, filed October 21, 1994, for consent to a transfer to those entities of control of television stations WJRT, Flint, Michigan (File No. BTCCT-941021KG), and WTVG, Toledo, Ohio (File No. BTCCT-941021KF).

[3] Report and Order, MM Docket No. 83-46, 97 FCC 2d 997, 55 RR 2d 1465, par. 76 (1984) ("Attribution Order"). See also Report and Order, Docket No. 8967, 9 RR 1563, par. 10 (1953); Report and

misleading in this context, since it may be thought to connote an ability to affect a licensed station's conduct in any respect and in any degree, however slight. The Commission has properly refrained from attempting to cast the net of the multiple ownership rules so widely. Instead, the Commission's "judgment as to what level of 'influence' should be subject to restriction by the multiple ownership rules has ... been based on [its] judgment regarding what interests in a licensee convey a realistic potential to affect its programming and other core operational decisions."[4] In identifying those interests, the Commission recognizes the importance of avoiding "unduly restricting the means by which investment capital may be made available to the broadcast industry," and otherwise ensnaring "innumerable interests that have no ability to impart influence or control over a licensee's core decision-making process."[5]

Establishing the appropriate attribution benchmarks necessarily entails predictive judgments -- which cannot be made

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Order, Docket No. 14711, 2 RR 2d 1588, pars. 2-3 (1964) ("Overlap Order"); Report and Order, Docket No. 83-1009, 56 RR 2d 859, pars. 6-7 (1984).

[4] Notice, par. 4. See also Notice, par. 46 (voting-shareholder benchmark should be set by applying "our best estimate of what level of stockholding is likely to be influential" while avoiding "attributing interests that provide only a minimal risk of influence") (emphasis added); Notice, par. 50 n. 99 (decision not to broaden scope of "passive" shareholders rule based on conventional understanding of various institutional investment entities and their typical degree of involvement in licensee conduct); Notice, pars. 97-98 (non-attribution of debt based on judgment that it is "least likely of all financing sources to involve an interest that implicates the multiple ownership rules").

[5] Notice, pars. 5, 16.

with precision -- about the kind and degree of influence likely to inhere in various financial and positional relationships.[6] The risk that must be avoided is establishing benchmarks that are not narrowly tailored to reach those interests that truly impart, in the substantial majority of cases, control over a licensee's core decision-making. The consequences of overly broad attribution guidelines are real and harmful. First, overly broad guidelines would artificially and impermissibly interfere with competition. Second, overly broad guidelines would unduly undermine the availability of capital.[7] The Commission recognized in 1992 that "the availability of capital has recently become a matter of increasing concern" to the broadcast industry, and that the capital demands of the industry "for all participants can only be expected to increase in the near future, as new technologies such as Digital Audio Broadcasting and Advanced Television are implemented."[8] Third, the benchmarks should be set to avoid imposing spurious attribution on individuals with useful broadcast experience, thus rendering them unavailable for service on licensee's boards or in their management.[9]

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[6] See Attribution Order, pars. 7, 42; Notice, par. 16.

[7] Notice, par. 5.

[8] Notice of Proposed Rule Making and Notice of Inquiry, MM Docket No. 92-51, 7 FCC Rcd 2654, par. 1 (1992) ("Capital Formation Notice").

[9] Compare Reexamination of the Commission's Cross-Interest Policy, MM Docket No. 87-154, 65 RR 2d 1734, par. 29 (1989) ("Cross-Interest Reexamination") (eliminating review of station consultants under cross-interest policy on ground that such review "hinders the ability of media outlets to attract and utilize ...

The Commission has recognized that the practical administration of the multiple ownership rules requires setting attribution benchmarks of general and predictable application.[10] In the comments that follow, we embrace that approach and stress the importance of clear-cut rules which will in most situations avoid case-by-case determinations. At the same time, we recognize the need for a mechanism to identify those relatively rare circumstances where interests, although not ordinarily attributable, could, when accompanied by a high percentage stake in the capitalization or equity of the enterprise, raise sufficient concern about control that an ad hoc approach may be warranted. We make a proposal to deal with these circumstances in Section III on Combined Non-Attributable Interests.

II. Benchmarks

Subject to our proposal in Section III, our position with respect to the individual benchmarks is as follows:

A. Voting Stock

In evaluating whether 5% is the appropriate attribution benchmark for voting stock, or whether the benchmark should be raised, it must be recognized that there will undoubtedly be

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qualified personnel with substantial broadcast experience").

[10] See Attribution Order, par. 24; Notice, pars. 5, 16, 46. Predictability of attribution will be particularly important if the Commission agrees with our proposal in the companion multiple ownership proceeding (MM Docket No. 91-221) to rely to a much greater extent upon case-by-case analysis to deal with television duopoly questions. The imposition of two levels of case-by-case analysis would effectively destroy overall predictability.

instances where more than 5% voting stock does not impart to the individual shareholder the power "to influence or control programming or other core decisions."[11] We share the Commission's concern that the attribution rules not restrict the availability of capital, and, therefore, we believe the Commission should give serious consideration to any evidence presented tending to show that the Commission's conclusion in 1984 -- that "the great majority of 5% or greater shareholders [are] the preeminent shareholders of their respective companies"[12] -- is no longer true. Such a showing would justify raising the benchmark to a level more consistent with current corporate ownership patterns.[13]

B. Passive Voting Shareholders

We suggest that it may be appropriate to broaden the application of the benchmark for "passive" voting shareholders (defined currently as bank trust departments, insurance companies and mutual funds)[14] to include other similar investment entities -- such as pension funds, investment and commercial banks, Small Business Investment Companies and Specialized Small Business

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[11] Notice, par. 26.

[12] Attribution Order, par. 14.

[13] In any event, we believe that the presumption of attribution based on a voting-stock threshold should continue to be rebuttable where the holder can show that another person or persons are in "indisputable control of the licensee." Attribution Order, par. 25.

[14] See Attribution Order, par. 30; Notice, par. 47.

Investment Companies[15] -- so long as they meet the passivity standard currently applied to the approved types of passive investor.[16]

Even accepting for the sake of argument the Commission's general understanding that the now-excluded types of investment entities are not "consistently passive," we believe that the Commission's requirements for treatment as a passive investor are sufficient to address any concern that a shareholder enjoying such status will be able to exercise material influence or control over a licensee.[17] Further, we believe broadening the permissible types of investor subject to the "passive" attribution benchmark will, as the Commission itself recognized in 1992, "substantially benefit the broadcast and cable industries by affording them access to new sources of capital," and "should also prove especially beneficial to new entrants, including, in particular, minorities and women, who historically have experienced significant difficulty securing adequate start-up funding."[18]

With respect to the 10% benchmark, as we said with respect to the voting-shareholder benchmark above, we believe the Commission should review the available evidence concerning current ownership

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[15] See Capital Formation Notice, par. 11 and n. 15; Notice, par. 50.

[16] Notice, par. 47 and n. 92. See also Attribution Order, par. 34.

[17] See Attribution Order, pars. 37-38 and n. 44-45; Notice, par. 50 n. 99.

[18] Capital Formation Notice, par. 7.

patterns in determining whether or not to raise the benchmark.[19]

C. Single Majority Shareholder Exception

We believe the single majority shareholder exception should be retained in the attribution scheme because we think the rationale articulated by the Commission in 1984 remains sound: where "simple majority vote is sufficient to affirmatively direct the affairs of a corporate licensee," it is not necessary or appropriate to attribute other shareholders' interests in the company because "the minority interest holders, even acting collaboratively, would be unable to direct the affairs or the activities of the licensee."[20] Under those circumstances, no minority shareholding can give its owner control over the corporation's core decisions; accordingly ownership of the corporation should not be attributed to that owner.[21]

D. Non-Voting Stock

We believe that non-voting stock interests standing alone should continue to be non-attributable based on the same rationale

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[19] See Attribution Order, par. 33.

[20] Attribution Order, par. 21 and n. 21. See also Notice, par. 51.

[21] Plainly, where that rationale does not apply -- for example, if the single majority shareholder may be required to divest himself involuntarily of his majority stake by other shareholders -- then the exception should not apply, but in the ordinary course a single majority shareholder has presumptive control over corporate decision-making and other shareholders should be exempt from attribution.

as applies in the case of voting stock where there is a single majority shareholder. Voting shareholders as a group, and the directors elected by them, are in control of a corporation. In our view, attribution of non-voting stock would necessarily be based on a view that the non-voting shareholder may have persuasive influence over those in actual control, even though the non-voting shareholder has no legal means to enforce its wishes. The Commission has not predicated attribution on such an amorphous and speculative species of "influence" in the past and should not do so now.[22]

E. Partnership Interests

Capital Cities/ABC does not propose that the Commission change its rule attributing a cognizable interest to all general partners. Nor do we propose that limited partnership interests be generally exempt from attribution. We do propose that the Commission revise its insulation criteria that effectively determine when a limited partners interest will be non-attributable.[23]

In 1984 the Commission based its attribution analysis of limited partnership interests on the notion that such interests "can be safely exempted from the effects and implications of the attribution rules" because a holder of such an interest "is in a position similar to that of a holder of a debt or non-voting stock as far as involvement in the management of the company is

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[22] See Notice, par. 54.

[23] See Notice, par. 55.

concerned."[24] The Commission noted, however, the need for "some means ... to verify appropriate insulation of the general partners from any possibility of control or influence by the limited partners," and decided that limited partnerships whose agreements conformed with the provisions of the Uniform Limited Partnership Act ("ULPA") would be considered properly insulated so long as the limited partners had no material involvement in the media operations at issue.[25] On reconsideration, the Commission eliminated the ULPA as the standard for insulation and instead sought "to provide additional guidance to limited partners as to what kind of insulation is sufficient to exempt a limited partnership interest from attribution," thus allowing "limited partners who wish to take advantage of our exclusion to include within their partnership agreement the appropriate safeguards which, in turn, would permit a licensee to make the requisite certification."[26]

The Commission's operative standard today is that insulation of a limited partner's interest, no matter how small, requires that certain limits on the limited partner's participation in partnership governance be written into the partnership agreement

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[24] Attribution Order, par. 51.

[25] Id., par. 52.

[26] Memorandum Opinion and Order, MM Docket No. 83-46, 58 RR 2d 604, par. 44 (1985) ("Attribution Reconsideration Order"). See also id., par. 46 ("We also wish to make clear that these guidelines are not incorporated into our rules and serve only to indicate the type of insulation the Commission will consider in evaluating challenges to the exclusion.").

and that, in addition, the limited partner "refrain from involvement in any material respect in the management and operation of the media activities."[27] We believe that requirement is too stringent and excludes from non-attribution limited partners whose partnership holdings do not create any likelihood that they will influence day-to-day operations of the partnership. Moreover the requirement is based on a premise -- which is both impractical and unrealistic -- that all limited partners can cause partnership agreements to be written or rewritten to include the provisions currently required for non-attribution.

Capital Cities/ABC proposes that a particular limited partner's interest be non-attributable -- regardless of the terms of the partnership agreement -- if the limited partner certifies in writing that he does not, and will not attempt to, use his limited partnership interest to exercise authority or influence over the core operations of a broadcast station in which the partnership holds a cognizable interest.[28] The Commission recognizes that officers and directors of a licensee's parent corporation -- persons with presumptive control over the licensee -- may be insulated from attribution "where those individuals' duties and

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[27] See Attribution Reconsideration Order, pars. 43, 47-50.

[28] Where a network holds a limited partnership interest in a licensee, its affiliation with the station should not cause the partnership interest to be attributable. An affiliation agreement standing alone has never been a basis for ownership attribution. See BBC License Subsidiary L.P., FCC 95-179 (released April 27, 1995), par. 39 ("SF Green Bay"). We ask the Commission to confirm this judgment on a going-forward basis regardless of what changes it may make in the attribution rules.

responsibilities are neither directly nor indirectly related to the activities of any broadcast licensee in which the corporation has a cognizable interest."[29] We believe there is no reason to apply more stringent insulation criteria to limited partners -- persons without presumptive control or influence over the licensee. In our view, a limited partner's written certification as described above confirms and effectuates the assumptions made by the Commission in 1984 that a limited partner "is in a position similar to that of a holder of debt or non-voting stock as far as the management of the company is concerned."[30]

F. Limited Liability Companies

We propose that limited liability companies (and other new forms of business organization that are designed to enjoy the tax benefits of partnership but with a more flexible management structure than under typical partnership law) should be treated for attribution purposes the same as limited partnerships: owners should be exempt from attribution if, either by virtue of limits on their management rights set forth in the structural documents of the entity or through a written certification, they are insulated from control over the licensee under the insulation criteria we

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[29] Attribution Order, par. 59. See Viacom, Inc., FCC 94-54, 74 RR 2d 1323, par. 12 (1994) (approving such an exemption from attribution).

[30] Attribution order, par. 51.

propose in II.E above.[31] Such a result is fair: where the business organization is comparable to a partnership with certain modified management arrangements (designed to enjoy the "pass through" tax benefits of conventional partnerships), it is equitable to apply the same attribution standards as are applied to partnerships.

G. Debt and Contractual Interests

The Commission notes that "debt and other contractual relationships can have the associated potential to exert influence on core operational decisions of the licensee," and seeks comment whether such relationships should be held attributable in some cases.[32] We agree with FCC's conclusion in 1984 that debt -- and by analogy, other arms'-length, non-ownership, contractual relationships with licensees that carry no explicit rights to influence "core" station operations -- should not be attributable: "There is no direct influence or control which pertains to them, and any indirect influence or control, if it occurred, would be too irregular and involve too many factors for the Commission to oversee."[33]

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[31] While owners who participate in the formation of a limited liability company might be expected to include such limits in the governing documents, later investors should be allowed to insulate themselves by renouncing control and influence as set forth above in Section E.

[32] Notice, par. 96.

[33] Attribution Order, par. 49. See also Notice, par. 97 (debt is "least likely of all financing sources to involve an interest that implicates multiple ownership rules").

A departure from the prevailing rule would be neither logical nor equitable. The debt investor should not be saddled with a presumption of ownership where he does not directly enjoy the traditional benefits of enterprise ownership: profits and increase in equity. In addition, a creditor's exclusion from upside potential suggests a lower likelihood of efforts to control day-to-day operations. As the Commission recognizes, such non-involvement is generally true for institutional lenders.[34] To the extent that some debtholders require borrowers to meet certain financial benchmarks during the pendency of the debt,[35] such generalized "balance-sheet" controls over a licensee do not extend to "core" operations and are akin to some non-voting shareholders' rights to compel dividends or financial distributions, which the Commission does not consider "power to influence or control licensee in a manner contemplated by the multiple ownership rules."[36]

In addition, attribution of ownership to a licensee's creditor "would create numerous rule violations and present extremely severe restrictions on capital sources for broadcasters large and small, particularly since the sources of debt financing are far fewer than for equity financing."[37] To presume that debt arrangements carry potential to influence core licensee operations such as programming and competitive practices is contrary to the practices in customary

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[34] Notice, par. 98.

[35] Notice, par. 96.

[36] Notice, par. 52 n. 106.

[37] Attribution Order, par. 49.

commercial debt relationships and would run contrary to the Commission's stated purpose to avoid "unduly restricting the means by which investment capital may be made available to the broadcast industry."[38]

III. Combined Non-Attributable Interests

The Commission seeks comment on whether its rules should provide for case-by-case review of "particular concentrations or conglomerations of ownership or influence" that are individually non-attributable, but might in the aggregate "undermine diversity and competition."[39] The Notice acknowledges the "burdens and uncertainty" that would be created by such a review. Indeed, the key virtue of attribution benchmarks, which we wholeheartedly endorse, is that they afford broadcast industry players predictability in business planning and transactions.

At the same time, we recognize that precisely because the benchmarks operate with certainty, they could be subject to abuse by parties who structure their transactions technically to avoid attribution while reserving to themselves the kind of control over core licensee decision-making the benchmarks were designed to capture.

Our proposal for dealing with the potential for abuse is to establish a second level of case-by-case review that would be limited to circumstances in which the party claiming non-

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[38] Notice, par. 5. See also Notice, par. 97.

[39] Notice, par. 99.

attribution has more than a 50% stake in the capitalization or equity of the enterprise.[40] Under those circumstances, we believe it would be reasonable for the Commission to apply a presumption of attribution. The presumption would be rebuttable by a case-by-case fact-based showing that the 50% plus stakeholder does not have the right to exercise and has not exercised control over the licensee's core areas of programming, personnel and competitive practices.

The ultimate standard in any such case-by-case review, we repeat, should be one of "control" rather than "material influence." The various attribution benchmarks -- which seek to capture instances of "influence" as well as "control" -- are justified essentially because of the predictability they lend to the Commission's overall enterprise in regulating multiple ownership. A case-by-case, multifactor inquiry, however, will necessarily have dispensed with the predictive benchmark approach. The issue is actual control, not material influence that does not amount to actual control.[41]

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[40] Capitalization would ordinarily refer to cash investment in a start-up entity other than that provided by banks and other traditional lending institutions. The means of measuring the size of an equity stake would depend on the form of the enterprise -- corporation, partnership, limited-liability corporation -- and on the particular circumstances of the investment. Generally the relevant factors would include, in addition to capitalization, allocation of profits and distribution rights upon sale of the enterprise.

[41] In conducting case-by-case review, the Commission should recognize that in each of the non-attributable categories the vast majority of transactions will be at arms' length, entered into freely as part of customary business operations. The Commission should require ownership attribution only upon a showing that non-attributable interests and various contractual relationships, individually or in the aggregate, are or have been used by the

Short of a 50% plus stake, we believe the need for predictability outweighs the benefits of case-by-case review. However, that should be small comfort to parties seeking to evade the Commission's policies. The Commission would continue to have both the ability and the responsibility under its existing standards of real-party-in-interest and de facto transfer of control to undertake case-by-case review in the context of applications for new stations or transfer or assignment applications.[42]

IV. Cross-Interest Policy

The Commission's cross-interest policy evolved in case-by-case adjudication, beginning at a time when the attribution rules imposed substantially fewer limits on ownership than now, and bars individuals from having "meaningful" interests in two media operations that serve "substantially the same area." In 1989 the Commission -- recognizing "the increasingly competitive environment facing the broadcast industry and the 1984 revisions to the

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relevant party to exercise direct control in the licensee's core areas of programming, personnel and competitive practices.

[42] See Southwest Texas Public Broadcasting Council, 85 FCC 2d 713, 49 RR 2d 156, 158 (1981) ("the principal indicia of control examined to determine whether an unauthorized transfer of control has occurred are control of policies regarding (a) the finances of the station, (b) personnel matters and (c) programming"); accord Fresno PM Limited Partnership, 68 RR 2d 1645, 1648 (Rev. Bd. 1991); Rayne Broadcasting Co., Inc., 5 FCC Rcd. 3350, 67 RR 2d 1501, 1503 (Rev. Bd. 1990) ("test for determining whether a third party is a real-party-in-interest is whether that person [or persons] has an ownership interest, or will be in a position to control, actually or potentially, the operation of the station"). See also SF Green Bay, par. 35.

Commission's attribution rules" -- released a policy statement eliminating application of the cross-interest policy to consulting positions, time brokerage arrangements and advertising-agency representative relationships.[43] The policy now remains only as it applies to non-attributable equity interests, "key employees" and joint ventures.[44]

Capital Cities/ABC suggests that the Commission's policy bases for reducing the scope of the cross-interest policy in 1989 justify elimination of the balance of the policy now.[45] The concerns about blunting competitive incentives which are the historical underpinning of the policy can be safeguarded in the context of antitrust enforcement. These concerns are also diminished because many potential cross-interest situations are foreclosed in practice by fiduciary duties and private contract rights.[46] The proposal we have made in Section III above for a second-level attribution review in the case of 50% plus stakeholders will also reduce the frequency with which such situations are likely to arise.

The need for predictability discussed above would be undermined by case-by-case review of cross interests. As reflected in the notice, commenters on the cross-interest policy in earlier proceedings discussed the administrative burden and uncertainty of

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[43] Notice, pars. 76-80. See also Cross-Interest Reexamination, par. 20.

[44] Notice, par. 81.

[45] See Notice, par. 80.

[46] Notice at 83.

ad hoc decision-making which impedes the ability of broadcasters to raise capital.[47] These considerations should outweigh the Commission's residual concerns where the Commission itself has determined that the interests in question lack the potential for influence to justify attribution. As the Commission noted in 1984, the interests made cognizable in the amendments to the attribution rules reflect the Commission's "informed policy judgment" regarding which "types of relationships ... detrimentally affect diversity and competition and should, therefore, be restricted in order to promote the public interest."[48]

V. Grandfathering

We believe that any new attribution rules adopted by the Commission should be prospective. An interest acquired by a party that was not attributable at the time of acquisition should not be made attributable by the adoption of new rules. The Commission decided under similar circumstances, in adopting the "one-to-a-market rule," section 73.3555(c), that multiple-broadcast-service owners in one market would not be applied retroactively, in part because of the disruptive effect of mandatory divestiture.[49]

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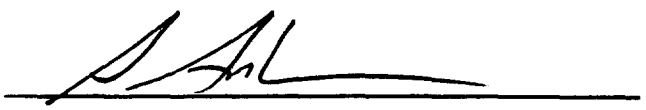
[47] Notice at 85, 90.

[48] Attribution Order, par. 33. See also Notice, par. 13.

[49] First Report and Order, Docket No. 18110, 18 RR 2d 1735, par. 68 (1970); Second Report and Order, Docket No. 18110, 32 RR 2d 954, par. 30 (1975). The Commission required break-up of the grandfathered combinations upon sale, but that requirement does not apply here, where any potential rule violation would not inhere to a group of stations but rather would flow from the particular holdings of a potential buyer.

The same considerations should apply to any new attribution rules. Parties who formed relationships or made investments under rules then in force should not have their expectations disrupted and their prospective financial advantage forfeited as the result of unanticipated changes in the attribution rules. As in the one-to-a-market context: there is no compelling public interest benefit to justify the unfairness of applying new attribution rules retroactively to multiple station owners.

Respectfully submitted,

By: 

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